ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION II

CACR07-875

MARCH 5, 2008

KENT D. HORTON APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. CR-2006-958(B)]
V.	HON. J. MICHAEL FITZHUGH, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Appellant Kent D. Horton appeals the May 25, 2007 order of the Sebastian County Circuit Court finding that he owes restitution in the amount of $72,694. On appeal, appellant argues that the trial court erred in determining the amount of restitution ordered. We find no error and affirm.

Appellant pled guilty in November 2006 to four counts of theft of property and was sentenced to three-years' imprisonment in the Arkansas Department of Correction with an additional seven-years' suspended imposition of sentence. On April 27, 2007, a restitution hearing was held, wherein Barbara Sublett, property manager for the owner, John Canterbury, testified that five air-conditioning units attached to a 30,000 square-foot building were

vandalized for the copper content and rendered useless. She testified that the units were unsalvageable. She stated that, at the time the copper was stolen, the property was vacant. She claimed that the replacement cost of the units was $72,694. She did not know how old the units were, if they were working at the time they were stripped of their copper, if they could be repaired, or the age of the units or the building. She testified that when new units are installed, the city requires smoke detectors, which are not a part of the air-conditioning units. Ms. Sublett did not know if low-ambient kits were attached to the air-conditioning units and did not know their cost. The trial court requested information regarding the value of the low-ambient kits, and the hearing was continued.

When the hearing proceeded on the following Tuesday, May 1, 2007, Mr. Canterbury did not appear and the trial court ruled that defense counsel failed to timely serve Canterbury with a subpoena. However, Ms. Sublett again testified from her business records that the seven-and-a-half-ton unit cost estimate was approximately $11,250; the ten-ton unit was $15,000; and the fifteen-ton unit was $45,000. She claimed that the low-ambient kits were $800 and the smoke-detector kits were $500. The freight cost on the equipment was $150. Ms. Sublett testified that insurance did not cover the damage to the property because the property had been vacant for sixty days prior to the vandalism. She stated that she did not know when the air conditioners worked last and did not know if they were operational at the time the copper was stolen. Finally, she testified that county records showed that the building appraised for $106,800. She claimed that the building was being used at the time of the

hearing as storage and was leased for $2,000 less per month than it had been when it was last leased prior to the theft.

Appellant testified, admitting that he told Robert Cosgrove, a man described as a co-defendant, about the air conditioners. He proposed to Mr. Cosgrove that he would split the money if Mr. Cosgrove committed the theft. He stated that Mr. Cosgrove was unable to do the job alone, so appellant had to help him. He further admitted that he stripped the copper from one air-conditioning unit, but denied stripping the other four. Appellant testified that he had a sixth-grade education, that he receives social-security-disability benefits of $620 per month due to paranoid schizophrenia, and that he was last gainfully employed fifteen years ago.

The trial court ruled that appellant, by his own admissions, either participated in or masterminded the destruction of the air-conditioning units, and entered a judgment against him for restitution in the amount of $72,694. The judgment was found to be joint and several with Mr. Cosgrove.[1] This appeal followed.

A defendant who pleads guilty or no contest may be ordered to pay restitution. Ark. Code Ann. § 5-4-205 (Repl. 2006). The purpose of restitution is to make the victim whole with respect to the financial injury suffered as a result of the defendant's crime. Ark. Code Ann. § 16-90-301 (1987); *Nix v. State*, 54 Ark. App. 302, 925 S.W.2d 802 (1996). The determination of the amount of loss is a factual question for the trial court to be decided by

[1]There is no evidence that Mr. Cosgrove participated in any hearing involving appellant.

the preponderance of the evidence. Ark. Code Ann. § 5-4-205(a)(4)(A). In bench trials, the standard of review on appeal is not whether there is substantial evidence to support the finding of the circuit court, but whether the judge's findings were clearly erroneous or clearly against the preponderance of the evidence. *El Paso Prod. Co. v. Blanchard*, ___ Ark. ___, ___ S.W.3d ___ (Dec. 6, 2007). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that an error has been committed. *Id.* Facts in dispute and determinations of credibility are within the province of the fact-finder. *Id.*

For his sole point on appeal, appellant argues that the trial court erred in determining $72,694 to be the correct restitution amount. Appellant contends that the State has the burden of proving the value of the property that was stolen. *See Russell v. State*, 367 Ark. 557, ___ S.W.3d ___ (2006) (where the issue was the value of a stolen item, which would determine whether the defendant was to be convicted of a Class C felony or Class A misdemeanor). He claims that the actual value of the vandalized air conditioning units was never shown in this case. He contends that the State's only witness was unable to testify as to the age of the units, whether the units worked, or whether the units could be repaired. The witness further testified that the city required more equipment than what had originally been in the building if the items were replaced, which was at least $1300 above the replacement cost of new air-conditioning units.

Further, appellant claims that the victim would be receiving a windfall because the building was valued at $106,800, and the restitution amount for the units was determined to

be $72,694. Appellant contends that the trial court must make a determination of "actual economic loss caused to a victim by the offense." Ark. Code Ann. § 5-4-205(b)(1). He claims that the State never showed the actual financial injury that the victim suffered.

We hold that a preponderance of the evidence supports the trial court's finding that the victim was entitled to restitution equal to the replacement cost of the air-conditioning units. Ms. Sublett testified that the damage to the units rendered them "unsalvageable." No evidence was submitted to counter this evidence. Accordingly, we affirm the trial court's determination of the restitution amount of $72,694.

Affirmed.

ROBBINS and HEFFLEY, JJ., agree.